McCLELLAN AFB INTERAGENCY AGREEMENT

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 9
AND THE
STATE OF CALIFORNIA
AND THE
UNITED STATES AIR FORCE

IN THE MATTER OF:	Federal Facility Agreement Under CERCLA Section 120
The U.S. Department of the Air Force	
McClellan Air Force Base	Administrative Docket Number:

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IN THE MATTER OF:	Federal Facility Agreement Under CERCLA Section 120
The U.S. Department of the Air Force	
McClellan Air Force Base	Administrative Docket Number:

Based on the information available to the Parties on the effective date of this federal facility agreement (Agreement), and without trial or adjudication of any issues of fact or law, the Parties agree as follows:

1. PURPOSE

1.1 The general purposes of this Agreement are to:

(a) Ensure that the environmental impacts associated with past and present activities at the Site are thoroughly investigated and appropriate remedial action taken as necessary to protect the public health, welfare and the environment;

(b) Establish a procedural framework and schedule for developing, implementing and monitoring appropriate response actions at the Site in accordance with CERCLA, the NCP, Superfund guidance and policy, RCRA, RCRA guidance and policy, and applicable State law; and

(c) Facilitate cooperation, exchange of information and participation of the Parties in such action.

1.2 Specifically, the purposes of this Agreement are to:

(a) Identify operable unit (OU) alternatives which are appropriate at the Site prior to the implementation of final remedial action(s) for the Site. OU alternatives shall be

identified and proposed to the Parties as early as possible prior to formal proposal of OUs to EPA and the State pursuant to CERCLA and applicable State law. This process is designed to promote cooperation among Parties in identifying OU alternatives prior to the final selection of Operable Units;

(b) Establish requirements for the performance of an RI to determine fully the nature and extent of the threat to the public health or welfare or the environment caused by the release and threatened release of hazardous substances, pollutants, or contaminants at the Site and to establish requirements for the performance of an FS for the Site to identify, evaluate, and select alternatives for the appropriate remedial action(s) to prevent, mitigate, or abate the release or threatened release of hazardous substances, pollutants, or contaminants at the Site in accordance with CERCLA and applicable State law;

(c) Identify the nature, objective, and schedule of response actions to be taken at the Site. Response actions at the Site shall attain that degree of cleanup of hazardous substances, pollutants or contaminants mandated by CERCLA and applicable State law;

(d) Implement the selected remedial actions(s) in accordance with CERCLA and applicable State law and meet the requirements of CERCLA section 120(e)(2), 42 U.S.C. § 9620(e)(2), pertaining to interagency agreements;

(e) Assure compliance, through this Agreement, with RCRA and other federal and State hazardous waste laws and regulations for matters covered herein;

(f) Coordinate response actions at the Site with the mission and support activities at McClellan AFB;

(g) Expedite the cleanup process to the extent consistent with protection of human health and the environment;

(h) Provide for State involvement in the initiation, development, selection and enforcement of remedial actions to be undertaken at McClellan AFB, including the review of all applicable data as it becomes available and the development of studies, reports, and action plans; and to identify and integrate State ARARs into the remedial action process.

(i) Provide for operation and maintenance of any remedial action selected and implemented pursuant to this Agreement.

2. PARTIES

2.1 The Parties to this Agreement are EPA, the Air Force, and the State of California. The terms of the Agreement shall apply to and be binding upon EPA, the State of California, and the Air Force.

2.2 This Agreement shall be enforceable against all of the Parties to this Agreement. This Article shall not be construed as an agreement to indemnify any person. The Air Force shall notify its agents, members, employees, response action contractors for the Site, and all subsequent owners, operators, and lessees of the Site of the existence of this Agreement.

2.3 Each Party shall be responsible for ensuring that its contractors comply with the terms and conditions of this Agreement. Failure of a Party to provide proper direction to its contractors and any resultant noncompliance with this Agreement by a contractor shall not be considered a Force Majeure event or other good cause for extensions under Section 9 (Extensions), unless the Parties so agree. The Air Force will notify EPA and the State of the identity and assigned tasks of each of its contractors performing work under this Agreement upon their selection.

2.4 The Department of Health Services (DHS) is the designated single State agency, in accordance with California Government Code section 12018, and Health and Safety Code section 25159.7, responsible for the federal programs to be carried out under this Agreement, and the lead agency for the State of California.

3. JURISDICTION

3.1 Each Party is entering into this Agreement pursuant to the following authorities:

(a) The U.S. Environmental Protection Agency (EPA), enters into those portions of this Agreement that relate to the remedial investigation/feasibility study (RI/FS) pursuant to section 120(e)(1) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), 42 U.S.C. § 9620(e)(1), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), Pub. L. 99-499 (hereinafter jointly referred to as CERCLA), and the Resource Conservation and Recovery Act (RCRA)

sections 6001, 3008(h) and 3004(u) and (v), 42 U.S.C. § 6961, 6928(h), 6924(u) and (v), as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA) (hereinafter jointly referred to as RCRA), and Executive Order 12580;

(b) EPA enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), and Executive Order 12580;

(c) The Air Force enters into those portions of this Agreement that relate to the RI/FS pursuant to CERCLA section 120(e)(1), 42 U.S.C. § 9620(e)(1), RCRA sections 6001, 3008(h) and 3004(u) & (v), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), Executive Order 12580, the National Environmental Policy Act, 42 U.S.C. § 4321, and the Defense Environmental Restoration program (DERP), 10 U.S.C. § 2701 et. seq.;

(d) The Air Force enters into those portions of this Agreement that relate to operable units and final remedial actions pursuant to CERCLA section 120(e)(2), 42 U.S.C. § 9620(e)(2), RCRA sections 6001, 3004(u) & (v), 3008(h), 42 U.S.C. § 6961, 6928(h), 6924(u) & (v), Executive Order 12580 and the DERP; and

(e) The California Department of Health Services enters into this Agreement pursuant to CERCLA sections 120(f) and 121, 42 U.S.C. § 9620(f) and 9621, and California Health and Safety Code sections 102 and 25355.5(a)(1)(C).

4. DEFINITIONS

4.1 Except as noted below or otherwise explicitly stated, the definitions provided in CERCLA, CERCLA case law, and the NCP shall control the meaning of terms used in this Agreement.

(a). "Agreement" shall refer to this document and shall include all Appendices to this document to the extent they are consistent with the original Agreement as executed or modified. All such Appendices shall be made an integral and enforceable part of this document. Copies of Appendices shall be available as part of the administrative record, as provided in Subsection 26.3.

(b). "Air Force" shall mean U.S. Air Force, its employees, members, agents, and authorized representatives as well as Department of Defense (DOD), to the

extent necessary to effectuate the terms of this Agreement, including, but not limited to, appropriations and Congressional reporting requirements.

(c). "ARARS" shall mean federal and State applicable or relevant and appropriate requirements, standards, criteria, or limitations, identified pursuant to section 121 of CERCLA. ARARs shall apply in the same manner and to the same extent that such are applied to any non-governmental entity, facility, unit, or site, as defined in CERCLA and the NCP. See CERCLA section 120(a)(1), 42 U.S.C. § 9620(a)(1).

(d). "CERCLA" shall mean the Comprehensive Environmental Response, Compensation and Liability Act, Public Law 96-510, 42 U.S.C. § 9601 et. seq., as amended by the Superfund Amendments and Reauthorization Act of 1986, Public Law 99-499, and any subsequent amendments.

(e). "Comprehensive CERCLA Workplan" or "CCW" is a document that will define priorities, approaches, and long range objectives throughout the remedial action process, including RI/FS tasks, operable unit and final remedial action selection and implementation, and operation and maintenance. The Comprehensive CERCLA Workplan will be updated by the Air Force at least annually, unless otherwise agreed upon by the Parties pursuant to Section 9 (Extensions). The Updates to the CCW are intended to reflect the dynamics of the remedial action process at McClellan AFB and to revise priorities and tasks as appropriate. Each Update shall supersede all preceding versions of the CCW. Each Update shall include a summary denoting which provisions remain unchanged from the immediately preceding Update and which provisions are being revised. The CCW and each Update to the CCW shall be prepared in a manner that fully complies with all requirements pertaining to RI/FS Workplans, except that Sampling and Analysis Plans may be prepared and submitted as separate primary documents. Each Update to the Comprehensive CERCLA Workplan may include a list of the most current deadlines for submission of draft primary documents, as agreed upon pursuant to Sections 8 (Deadlines) and 9 (Extensions) and set forth in Appendices to this Agreement.

(f). "Days" shall mean calendar days, unless business days are specified. Any submittal that under the terms of this Agreement would be due on Saturday, Sunday, or holiday shall be due on the following business day.

(g). "EPA" shall mean the United States Environmental Protection Agency, its employees and authorized representatives.

(h). "Facility" shall have the same definition as in CERCLA section 101(9), 42 U.S.C. § 9601(9).

(i). "Federal Facility" shall include McClellan Air Force Base and any real property subject to the jurisdiction of the Commander, 93rd Combat Support Group.

(j). "Feasibility Study" or "FS" means a study conducted pursuant to CERCLA and the NCP which fully develops, screens and evaluates in detail remedial action alternatives to prevent, mitigate, or abate the migration or the release of hazardous substances, pollutants, or contaminants at and from the Site. The Air Force shall conduct and prepare the FS in a manner to support the intent and objectives of Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

(k). "Meeting," in regard to Project Managers, shall mean an in-person discussion at a single location or a conference telephone call of all Project Managers. A conference call will suffice for an in-person meeting at the concurrence of the Project Managers.

(l). "National Contingency Plan" or "NCP" shall refer to the regulations contained in 40 CFR 300.1 et seq.

(m). "Operable Unit" or "OU" shall have the same meaning as provided in the NCP.

(n). "Operation and maintenance" shall mean activities required to maintain the effectiveness of response actions.

(o). "RCRA" or "RCRA/HSWA" shall mean the Resource Conservation and Recovery Act of 1976, Public Law 94-580, 42 U.S.C. § Sec. 6901 et. seq., as amended by the Hazardous and Solid Waste Amendments of 1984, Public Law 98-616, and any subsequent amendments.

(p). "Remedial Design" or "RD" shall have the same meaning as provided in the NCP.

(q). "Remedial Investigation" or "RI" means that investigation conducted pursuant to CERCLA and the NCP, as supplemented by the substantive provisions of the EPA RCRA Facilities Assessment guidance. The RI serves as a mechanism for collecting data for Site and waste characterization and conducting treatability studies as necessary to evaluate performance and cost of the treatment technologies. The data

gathered during the RI will also be used to conduct a baseline risk assessment, perform a feasibility study, and support design of a selected remedy. The Air Force shall conduct and prepare the RI in a manner to support the intent and objectives of Section 17 (Statutory Compliance/RCRA-CERCLA Integration).

(r). "Remedy" or "Remedial Action" or "RA" shall have the same meaning as provided in section 101(24) of CERCLA, 42 U.S.C. § 9601(24), and the NCP, and may consist of Operable Units.

(s). "Remove" or "Removal" shall have the same meaning as provided in section 101(23) of CERCLA, 42 U.S.C. § 9601(23), and the NCP.

(t). "Site" shall include the federal facility of McClellan Air Force Base as defined above, the facility as defined above, any area off the facility to or under which a release of hazardous substances has migrated, or threatens to migrate, from a source on or at McClellan AFB. For the purposes of obtaining permits, the terms "on-site" and "off-site" shall have the same meaning as provided in the NCP.

(u). "State" shall mean the State of California and its employees and authorized representatives, represented by the Department of Health Services (DHS) as the lead agency.

5. DETERMINATIONS

5.1 This Agreement is based upon the placement of McClellan Air Force Base (AFB), Sacramento County, California, on the National Priorities List by the Environmental Protection Agency on 22 July, 1987, 52 Federal Register 27620, at page 27642.

5.2 McClellan AFB is a facility under the jurisdiction, custody, or control of the Department of Defense within the meaning of Executive Order 12580, 52 Federal Register 2923, 29 January 1987. The Department of the Air Force is authorized to act in behalf of the Secretary of Defense for all functions delegated by the President through E.O. 12580 which are relevant to this Agreement.

5.3 McClellan AFB is a federal facility under the jurisdiction of the Secretary of Defense within the meaning of CERCLA section 120, 42 U.S.C. § 9620, and Superfund Amendments and Reauthorization Act of 1986 (SARA) Sec. 211, 10 U.S.C. § 2701 et seq., and subject to the Defense Environmental Restoration

Program (DERP).

5.4 The Air Force is the authorized delegate of the President under E.O. 12580 for receipt of notification by the State of its ARARs as required by CERCLA section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii).

5.5 The authority of the Air Force to exercise the delegated removal authority of the President pursuant to CERCLA section 104, 42 U.S.C. § 9604 is not altered by this Agreement.

5.6 An Attachment to this Agreement shows those reports, secondary or primary, which have been accepted as final before or on the effective date of this Agreement.

5.7 The actions to be taken pursuant to this Agreement are reasonable and necessary to protect the public health, welfare, or the environment.

5.8 There are areas within the boundaries of the federal facility where hazardous substances have been deposited, stored, placed, or otherwise come to be located in accordance with 42 U.S.C. § 9601(9) and (14).

5.9 There have been releases of hazardous substances, pollutants or contaminants at or from the federal facility into the environment within the meaning of 42 U.S.C. § 9601(22), 9604, 9606, and 9607.

5.10 With respect to these releases, the Air Force is an owner and/or operator subject to the provisions of 42 U.S.C. § 9607 and within the meaning of California Health and Safety Code section 25323.5(a).

5.11 Included as an Attachment to this Agreement is a map showing source(s) of suspected contamination and the areal extent of known contamination, based on information available at the time of the signing of this Agreement.

6. WORK TO BE PERFORMED

6.1 The Parties agree to perform the tasks, obligations and responsibilities described in this Section in accordance with CERCLA and CERCLA guidance and policy; the NCP; pertinent provisions of RCRA and RCRA guidance and policy; Executive Order

12580; applicable State laws and regulations; and all terms and conditions of this Agreement including documents prepared and incorporated in accordance with Section 7 (Consultation).

6.2 The Air Force agrees to undertake, seek adequate funding for, fully implement and report on the following tasks, with participation of the Parties as set forth in this Agreement:

(a) Remedial Investigations of the Site;

(b) Feasibility Studies for the Site;

(c) All response actions, including Operable Units, for the Site;

(d) Operation and maintenance of response actions at the Site.

6.3 The Parties agree to:

(a) Make their best efforts to expedite the initiation of response actions for the Site, particularly for Operable Units;

(b) Carry out all activities under this Agreement so as to protect the public health, welfare and the environment.

6.4 Upon request, EPA and the State agree to provide any Party with guidance or reasonable assistance in obtaining guidance relevant to the implementation of this Agreement.

7. CONSULTATION: Review and Comment Process for Draft and Final Documents

7.1 Applicability: The provisions of this Section establish the procedures that shall be used by the Parties to provide each other with appropriate technical support, notice, review, comment, and response to comments regarding RI/FS and RD/RA documents, specified herein as either primary or secondary documents. In accordance with CERCLA section 120, 42 U.S.C. § 9620, and 10 U.S.C. § 2705, the Air Force will normally be responsible for issuing primary and secondary documents to EPA, and the State. As of the effective date of this Agreement, all draft, draft final and final reports for any deliverable document identified herein shall be prepared, distributed and subject to dispute in accordance with subsections 7.2 through 7.10 below. The designation of a document as "draft" or "final" is solely for

purposes of consultation with EPA and the State in accordance with this Section. Such designation does not affect the obligation of the Parties to issue documents, which may be referred to herein as "final", to the public for review and comment as appropriate and as required by law.

7.2 General Process for RI/FS and RD/RA documents:

(a) Primary documents include those reports that are major, discrete, portions of RI/FS and/or RD/RA activities. Primary documents are initially issued by the Air Force in draft subject to review and comment by EPA and the State. Following receipt of comments on a particular draft primary document, the Air Force will respond to the comments received and issue a draft final primary document subject to dispute resolution. The draft final primary document will become the final primary document either thirty (30) days after the issuance of a draft final document if dispute resolution is not invoked or as modified by decision of the dispute resolution process.

(b) Secondary documents include those reports that are discrete portions of the primary documents and are typically input or feeder documents. Secondary documents are issued by the Air Force in draft subject to review and comment by EPA and the State. Although the Air Force will respond to comments received, the draft secondary documents may be finalized in the context of the corresponding primary documents. A secondary document may be disputed at the time the corresponding draft final primary document is issued.

(c) The Parties recognize that the lists of primary and secondary documents set forth in subsections 7.3 and 7.4 are not exclusive, and agree that additional primary and secondary documents may be added in the future. The Air Force may identify and propose additional primary and secondary documents in the Updates to its Comprehensive CERCLA Workplan, or at any other time as the need arises. EPA and the State may propose additional primary and secondary documents in their comments to the Air Force's Comprehensive CERCLA Workplan Updates, or at any other time as the need arises. If the Parties do not agree regarding the necessity for a proposed additional primary or secondary document, the disagreement shall be resolved pursuant to Section 12 (Dispute Resolution). Deadlines for submission of additional draft primary documents shall be established pursuant to subsection 8.5. Target dates for submission of additional secondary documents shall be established by the Project Managers, in accordance with subsection 7.4(b).

7.3 Primary Reports:

(a) The Air Force shall complete and transmit draft reports of the following primary documents for each operable unit and for the final remedy to EPA and the State, for review and comment in accordance with the provisions of this Section.

(1) Comprehensive CERCLA Workplan

(2) Updates of Comprehensive CERCLA Workplan

(3) Sampling and Analysis Plans

(4) Quality Assurance Project Plans (QAPPs)

(5) Community Relations Plans (may be amended as appropriate to address Operable Units)

(6) RI Reports

(7) FS Reports

(8) Proposed Plans

(9) Records of Decision (RODs)

(10) Remedial Designs (RDs)

(11) Remedial Action Work Plans (to include operation and maintenance plans and schedules for RA)

(b) Only draft final reports for primary documents shall be subject to dispute resolution. The Air Force shall complete and transmit draft primary documents in accordance with the timetable and deadlines established in Section 8 (Deadlines) of this Agreement.

(c) Primary documents may include target dates for subtasks which may be revised by the Project Managers as provided for in subsection 18.3. The purpose of target dates is to assist the Air Force in making deadlines, but target dates do not become enforceable by their inclusion in the primary documents and are not subject to Section 8 (Deadlines), Section 9 (Extensions) or Section 13 (Enforceability)."

7.4 Secondary Documents:

(a) The Air Force shall complete and transmit draft reports of the following secondary documents for each operable unit and for the final remedy to EPA and the State for review and comment.

(1) Site Characterization Summaries (part of RI)

(2) Sampling and Data Results

(3) Treatability Studies (only if generated)

(4) Initial Screenings of Alternatives

(5) Risk Assessments

(6) Well closure methods and procedures

(7) Detailed Analyses of Alternatives

(8) Post-Screening Investigation Work Plans

(b) Although EPA and the State may comment on the draft reports for the secondary documents listed above, such documents shall not be subject to dispute resolution except as provided by Subsection 7.2 hereof. Target dates for the completion and transmission of draft secondary reports shall be established by the Project Managers. The Project Managers also may agree upon additional secondary documents that are within the scope of the listed primary reports.

7.5. Meetings of the Project Managers. (See also Subsection 18.3) The Project Managers shall meet in person approximately every ninety (90) days, except as otherwise agreed by the Parties, to review and discuss the progress of work being performed at the Site, including progress on the primary and secondary documents. However, progress meetings shall be held more frequently, but not less than thirty (30) days apart, upon request by any Project Manager. Prior to preparing any draft report specified in subsections 7.3 and 7.4 above, the Project Managers shall meet in an effort to reach a common understanding with respect to the contents of the draft report.

7.6 Identification and Determination of Potential ARARs:

(a) For those primary reports or secondary documents for which ARAR determinations are appropriate, prior to the issuance of a draft report, the Project Managers shall meet to identify and propose all potential ARARs pertinent to the report

being addressed, including any permitting requirements which may be a source of ARARs. At that time, DHS, as the lead State agency, shall identify potential State ARARs as required by CERCLA section 121(d)(2)(A)(ii), 42 U.S.C. § 9621(d)(2)(A)(ii), which are pertinent to those activities for which it is responsible and the report being addressed. Draft ARAR determinations shall be prepared by the Air Force in accordance with CERCLA section 121(d)(2), 42 U.S.C. § 9621(d)(2), the NCP and pertinent guidance issued by EPA.

(b) DHS, as the State lead agency, will contact those State and local governmental agencies which are a potential source of proposed ARARs. The proposed ARARs obtained from the identified agencies will be submitted to the Air Force, along with a list of those agencies who failed to respond to DHS's solicitation of proposed ARARs. The Air Force will contact those agencies who failed to respond and again solicit these inputs.

(c) In identifying potential ARARs, the Parties recognize that actual ARARs can be identified only on a site-specific basis and that ARARs depend on the specific hazardous substances, pollutants and contaminants at a site, the particular actions associated with a proposed remedy and the characteristics of a site. The Parties recognize that ARAR identification is necessarily an iterative process and that potential ARARs must be identified and discussed among the Parties as early as possible, and must be reexamined throughout the RI/FS process until a ROD is issued.

7.7 Review and Comment on Draft Reports:

(a) The Air Force shall complete and transmit each draft primary report to EPA and the State on or before the corresponding deadline established for the issuance of the report. The Air Force shall complete and transmit the draft secondary documents in accordance with the target dates established for the issuance of such reports.

(b) Unless the Parties mutually agree to another time period, all draft reports shall be subject to a sixty (60) day period for review and comment. Review of any document by the EPA and the State may concern all aspects of the report (including completeness) and should include, but is not limited to, technical evaluation of any aspect to the document, and consistency with CERCLA, the NCP, applicable California law, and any pertinent guidance or policy issued by the EPA or the State. At the request of any Project Manager, and to expedite the review process, the Air Force shall make an oral presentation of the

report to the Parties at the next scheduled meeting of the Project Managers following transmittal of the draft report or within fourteen (14) days following the request, whichever is sooner. Comments by the EPA and the State shall be provided with adequate specificity so that the Air Force may respond to the comment and, if appropriate, make changes to the draft report. Comments shall refer to any pertinent sources of authority or references upon which the comments are based and, upon request of the Air Force, the EPA or the State, as appropriate, shall provide a copy of the cited authority or reference. EPA or the State may extend the sixty (60) day comment period for an additional thirty (30) days by written notice to the Air Force prior to the end of the sixty (60) day period. On or before the close of the comment period, EPA and the State shall transmit their written comments to the Air Force. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

(c) Representatives of the Air Force shall make themselves readily available to EPA and the State during the comment period for purposes of informally responding to questions and comments on draft reports. Oral comments made during such discussions need not be the subject of a written response by the Air Force on the close of the comment period.

(d) In commenting on a draft report which contains a proposed ARAR determination, EPA and the State shall include a reasoned statement of whether it objects to any portion of the proposed ARAR determination. To the extent that EPA or the State does object, it shall explain the basis for its objection in detail and shall identify any ARARs which it believes were not properly addressed in the proposed ARAR determination.

(e) Following the close of the comment period for a draft report, the Air Force shall give full consideration to all written comments. Within fifteen (15) days following the close of the comment period on a draft secondary report or draft primary report the Parties shall hold a meeting to discuss all comments received. On a draft secondary report the Air Force shall, within sixty (60) days of the close of the comment period, transmit to the EPA and the State its written response to the comments received. On a draft primary report the Air Force shall, within sixty (60) days of the close of the comment period, transmit to EPA and the State a draft final primary report, which shall include the Air Force's response to all written comments received within the comment period. While the resulting draft final report shall be the responsibility of the Air Force, it shall be the product of consensus to the maximum extent possible.

(f) The Air Force may extend the sixty (60) day period for either responding to comments on a draft report or for issuing the draft final primary report for an additional thirty (30) days by providing written notice to EPA and the State. In appropriate circumstances, this time period may be further extended in accordance with Section 9 (Extensions).

7.8 Availability of Dispute Resolution for Draft Final Primary Documents:

(a) Dispute resolution shall be available to the Parties for draft final primary reports as set forth in Section 12 (Dispute Resolution).

(b) When dispute resolution is invoked on a draft final primary report, work may be stopped in accordance with the procedures set forth in Subsection 12.9 regarding dispute resolution.

7.9 Finalization of Reports: The draft final primary report shall serve as the final primary report if no party invokes dispute resolution regarding the document or, if invoked, at completion of the dispute resolution process should the Air Force's position be sustained. If the Air Force's determination is not sustained in the dispute resolution process, the Air Force shall prepare, within not more than sixty (60) days, a revision of the draft final report which conforms to the results of dispute resolution. In appropriate circumstances, the time period for this revision period may be extended in accordance with Section 9 (Extensions).

7.10 Subsequent Modification of Final Reports: Following finalization of any primary report pursuant to Subsection 7.9 above, any Party may seek to modify the report including seeking additional field work, pilot studies, computer modeling or other supporting technical work, only as provided in subparagraphs (a) and (b) below.

(a) Any Party may seek to modify a report after finalization if it determines, based on new information (i.e., information that becomes available, or conditions that become known, after the report was finalized) that the requested modification is necessary. Any party may seek such a modification by submitting a concise written request to the Project Managers of the other Parties. The request shall specify the nature of the requested modification and how the request is based on new information.

(b) In the event that a consensus is not reached by the Project Managers on the need for a modification, any Party may invoke dispute resolution to determine if such modification shall be conducted. Modification of a report shall be required only upon a showing that:

(1) The requested modification is based on significant new information; and

(2) The requested modification could be of significant assistance in evaluating impacts on the public health or the environment, in evaluating the selection of remedial alternatives, or in protecting human health and the environment.

(c) Nothing in this Section shall alter EPA's or the State's ability to request the performance of additional work which was not contemplated by this Agreement. The Air Force's obligation to perform such work must be established by either a modification of a report or document or by amendments to this Agreement.

8. DEADLINES

8.1. All deadlines agreed upon before the effective date of this Agreement shall be made an Appendix to this Agreement. To the extent that deadlines have already been mutually agreed upon by the Parties prior to the execution of this Agreement, they will satisfy the requirements of this Section and remain in effect, shall be published in accordance with Subsection 8.2, and shall be incorporated into the appropriate work plans.

8.2. Within twenty-one (21) days of the effective date of this Agreement, the Air Force shall propose deadlines for completion of the following draft primary documents for those operable units identified as of the effective date of this Agreement and for the final remedy:

(a) RI Reports

(b) FS Reports

(c) Proposed Plans

(d) Records of Decision

(e) Sampling and Analysis Plans, and target dates for associated tasks.

Within fifteen (15) days of receipt, EPA and the State, shall review and provide comments to the Air Force regarding the proposed deadlines. Within fifteen (15) days following receipt of the comments the Air Force shall, as appropriate, make revisions and reissue the proposal. The Parties shall meet as necessary to discuss and finalize the proposed deadlines. All agreed-upon deadlines shall be incorporated into the appropriate work plans. If the Parties fail to agree within thirty (30) days on the proposed deadlines, the matter shall immediately be submitted for dispute resolution pursuant to Section 12 (Dispute Resolution). The final deadlines established pursuant to this Subsection shall be published by EPA, in conjunction with the State, and shall become an Appendix to this Agreement.

8.3 Within twenty-one (21) days of issuance of the Record of Decision for any operable unit or for the final remedy, the Air Force shall propose deadlines for completion of the following draft primary documents:

(a) Remedial Designs

(b) Remedial Action Work Plans (to include operation and maintenance plans and schedules for RA)

These deadlines shall be proposed, finalized and published using the same procedures set forth in Subsection 8.2 above.

8.4 For any operable units not identified as of the effective date of this Agreement, the Air Force shall propose deadlines for all documents listed in Subsection 7.3 (with the exception of the Community Relations Plan) within twenty-one (21) days of agreement on the proposed operable unit by all Parties. These deadlines shall be proposed, finalized and published using the same procedures set forth in Subsection 8.2, above.

8.5 The Air Force shall propose deadlines for submission of any draft primary documents added pursuant to Subsection 7.2(c), within twenty-one (21) days of agreement on such proposed additional documents by all Parties. These deadlines shall be proposed, finalized and published using the same procedures set forth in Subsection 8.2 above.

8.6 The deadlines set forth in this Section, or to be established as set forth in this Section, may be extended pursuant to Section 9 (Extensions). The Parties recognize that

one possible basis for extension of the deadlines for completion of the Remedial Investigation and Feasibility Study Reports is the identification of significant new Site conditions during the performance of the remedial investigation.

9. EXTENSIONS

9.1 Timetables, deadlines and schedules shall be extended upon receipt of a timely request for extension and when good cause exists for the requested extension. Any request for extension by a Party shall be submitted to the other Parties in writing and shall specify:

(a) The timetable, deadline or schedule that is sought to be extended;

(b) The length of the extension sought;

(c) The good cause(s) for the extension; and

(d) The extent to which any related timetable and deadline or schedule would be affected if the extension were granted.

9.2 Good cause exists for an extension when sought in regard to:

(a) An event of Force Majeure;

(b) A delay caused by another Party's failure to meet any requirement of this Agreement;

(c) A delay caused by the good faith invocation of dispute resolution or the initiation of judicial action;

(d) A delay caused, or which is likely to be caused, by the grant of an extension in regard to another timetable and deadline or schedule;

(e) A delay caused by public comment periods or hearings required under State law in connection with the State's performance of this Agreement;

(f) Any work stoppage within the scope of Section 11 (Emergencies and Removals); or

(g) Any other event or series of events mutually agreed to by the Parties as constituting good cause.

9.3 Absent agreement of the Parties with respect to the existence of good cause, a Party may seek and obtain a determination through the dispute resolution process that good cause exists.

9.4 Within seven days of receipt of a request for an extension of a timetable, deadline or schedule, each receiving Party shall advise the requesting Party in writing of the receiving Party's position on the request. Any failure by a receiving Party to respond within the 7-day period shall be deemed to constitute concurrence with the request for extension. If a receiving Party does not concur in the requested extension, it shall include in its statement of nonconcurrence an explanation of the basis for its position.

9.5 If there is consensus among the Parties that the requested extension is warranted, the Air Force shall extend the affected timetable and deadline or schedule accordingly. If there is no consensus among the Parties as to whether all or part of the requested extension is warranted, the timetable and deadline or schedule shall not be extended except in accordance with a determination resulting from the dispute resolution process.

9.6 Within seven days of receipt of a statement of nonconcurrence with the requested extension, the requesting Party may invoke dispute resolution.

9.7 A timely and good faith request by the Air Force for an extension shall toll any assessment of stipulated penalties or application for judicial enforcement of the affected timetable and deadline or schedule until a decision is reached on whether the requested extension will be approved. If dispute resolution is invoked and the requested extension is denied, stipulated penalties may be assessed and may accrue from the date of the original timetable, deadline or schedule. Following the grant of an extension, an assessment of stipulated penalties or an application for judicial enforcement may be sought only to compel compliance with the timetable and deadline or schedule as most recently extended.

10. FORCE MAJEURE

10.1 A Force Majeure shall mean any event arising from causes beyond the control of a Party that causes a delay in or

prevents the performance of any obligation under this Agreement, including, but not limited to, acts of God; fire; war; insurrection; civil disturbance; explosion; unanticipated breakage or accident to machinery, equipment or lines of pipe despite reasonably diligent maintenance; adverse weather conditions that could not be reasonably anticipated; unusual delay in transportation; restraint by court order or order of public authority; inability to obtain, at reasonable cost and after exercise of reasonable diligence, any necessary authorizations, approvals, permits, or licenses due to action or inaction of any governmental agency or authority other than the Air Force; delays caused by compliance with applicable statutes or regulations governing contracting, procurement or acquisition procedures, despite the exercise of reasonable diligence; and insufficient availability of appropriated funds which have been diligently sought. In order for Force Majeure based on insufficient funding to apply to the Air Force, the Air Force shall have made timely request for such funds as part of the budgetary process as set forth in Section 15 (Funding). A Force Majeure shall also include any strike or other labor dispute, whether or not within the control of the Parties affected thereby. Force Majeure shall not include increased costs or expenses of Response Actions, whether or not anticipated at the time such Response Actions were initiated.

11. EMERGENCIES AND REMOVALS

11.1 Discovery and Notification.

If any Party discovers or becomes aware of an emergency or other situation that may present an endangerment to public health, welfare or the environment at or near the Site, which is related to or may affect the work performed under this Agreement, that Party shall immediately orally notify all other Parties. If the emergency arises from activities conducted pursuant to this Agreement, the Air Force shall then take immediate action to notify the appropriate State and local agencies and affected members of the public.

11.2 Work Stoppage

In the event any Party determines that activities conducted pursuant to this Agreement will cause or otherwise be threatened by a situation described in Subsection 11.1, the Party may propose the termination of such activities. If the Parties mutually agree, the activities shall be stopped for such period of time as required to abate the danger. In the absence of

mutual agreement, the activities shall be stopped in accordance with the proposal, and the matter shall be immediately referred to the EPA Hazardous Waste Management Division Director for a work stoppage determination in accordance with Section 12.9.

11.3 Removal Actions

(a) The provisions of this Section shall apply to all removal actions as defined in CERCLA section 101(23), 42 U.S.C. § 9601(23) and Health and Safety Code section 25323, including all modifications to, or extensions of, the ongoing removal actions, and all new removal actions proposed or commenced following the effective date of this Agreement.

(b) Any removal actions conducted at the Site shall be conducted in a manner consistent with this Agreement, CERCLA, the NCP and Executive Order 12580.

(c) Nothing in this Agreement shall alter the Air Force's authority with respect to removal actions conducted pursuant to section 104 of CERCLA, 42 U.S.C. § 9604.

(d) Nothing in this Agreement shall alter any authority the State or EPA may have with respect to removal actions conducted at the Site.

(e) All reviews conducted by EPA and the State pursuant to 10 U.S.C. § 2705(b)(2) will be expedited so as not to unduly jeopardize fiscal resources of the Air Force for funding the removal actions.

(f) If a Party determines that there may be an endangerment to the public health or welfare or the environment because of an actual or threatened release of a hazardous substance, pollutant or contaminant at or from the Site, including but not limited to discovery of contamination of a drinking water well at concentrations that exceed any State or federal drinking water action level or standards, the Party may request that the Air Force take such response actions as may be necessary to abate such danger or threat and to protect the public health or welfare or the environment. Such actions might include provision of alternative drinking water supplies or other response actions listed in CERCLA section 101(23) or (24), or such other relief as the public interest may require.

11.4 Notice and Opportunity to Comment.

(a) The Air Force shall provide the other Parties with timely notice and opportunity to review and comment upon any proposed removal action for the Site, in accordance with 10 U.S.C. § 2705(a) and (b). The Air Force agrees to provide the information described below pursuant to such obligation.

(b) For emergency response actions, the Air Force shall provide EPA and the State with notice in accordance with Subsection 11.1. Such oral notification shall, except in the case of extreme emergencies, include adequate information concerning the Site background, threat to the public health and welfare or the environment (including the need for response), proposed actions and costs (including a comparison of possible alternatives, means of transportation of any hazardous substances off-site, and proposed manner of disposal), expected change in the situation should no action be taken or should action be delayed (including associated environmental impacts), any important policy issues, and the Air Force On-Scene Coordinator recommendations. Within forty-five (45) days of completion of the emergency action, the Air Force will furnish EPA and the State with an Action Memorandum addressing the information provided in the oral notification, and any other information required pursuant to CERCLA and the NCP, and in accordance with pertinent EPA guidance, for such actions.

(c) For other removal actions, the Air Force will provide EPA and the State with any information required by CERCLA, the NCP, and in accordance with pertinent EPA guidance, such as the Action Memorandum, the Engineering Evaluation/Cost Analysis (in the case of non-time-critical removals) and, to the extent it is not otherwise included, all information required to be provided in accordance with paragraph (b) of this Subsection. Such information shall be furnished at least forty-five (45) days before the response action is to begin.

(d) All activities related to ongoing removal actions shall be reported by the Air Force in the progress reports as described in Section 19 (Project Managers).

11.5 Any dispute among the Parties as to whether a proposed nonemergency response action is properly considered a removal action, as defined by 42 U.S.C. § 9601(23), or as to the consistency of such a removal action with the final remedial action, shall be resolved pursuant to Section 12 (Dispute Resolution). Such dispute may be brought directly to the DRC or the SEC at any Party's request.

12. DISPUTE RESOLUTION

12.1 Except as specifically set forth elsewhere in this Agreement, if a dispute arises under this Agreement, the procedures of this Section shall apply. Any party may invoke this dispute resolution procedure. All Parties to this Agreement shall make reasonable efforts to informally resolve disputes at the Project Manager or immediate supervisor level. If resolution cannot be achieved informally, the procedures of this Section shall be implemented to resolve a dispute.

12.2 Within thirty (30) days after: (a) the issuance of a draft final primary document pursuant to Section 7 (Consultation), or (b) any action which leads to or generates a dispute, the disputing Party shall submit to the Dispute Resolution Committee (DRC) a written statement of dispute setting forth the nature of the dispute, the work affected by the dispute, the disputing Party's position with respect to the dispute and the technical, legal or factual information the disputing Party is relying upon to support its position.

12.3 Prior to any Party's issuance of a written statement of a dispute, the disputing Party shall engage the other Party in informal dispute resolution among the Project Manager and/or their immediate supervisors. During this informal dispute resolution period the Parties shall meet as many times as are necessary to discuss and attempt resolution of the dispute.

12.4 The DRC will serve as a forum for resolution of dispute for which agreement has not been reached through informal dispute resolution. The Parties shall each designate one individual and an alternate to serve on the DRC. The individuals designated to serve on the DRC shall be employed at the policy level Senior Executive Service (SES) or equivalent or be delegated the authority to participate on the DRC for the purposes of dispute resolution under this Agreement. The EPA representative on DRC is the Hazardous Waste Management Division Director of EPA's Region 9. The Air Force's designated member is the Vice Commander, Sacramento Air Logistics Center. The DHS representative is the Chief of the Site Mitigation Unit, Region 1. Written notice of any delegation of authority from a Party's designated representative on the DRC shall be provided to all other Parties pursuant to the procedures of Section 21 (Notification).

12.5 Following elevation of a dispute to the DRC, the DRC shall have twenty-one (21) days to unanimously resolve the dispute and issue a written decision. If the DRC is unable to unanimously resolve the dispute within this twenty-one (21) day

period, the written statement of dispute shall be forwarded to the Senior Executive Committee (SEC) for resolution within seven (7) days after the close of the twenty-one (21) day resolution period.

12.6 The SEC will serve as the forum for resolution of disputes for which agreement has not been reached by the DRC. The EPA representative on the SEC is the Regional Administrator of EPA Region 9. The Air Force's representative on the SEC is the Chief of Staff, Air Force Logistics Command. The DHS representative on the SEC is the DHS Chief Deputy Director. The SEC members shall, as appropriate, confer, meet and exert their best efforts to resolve the dispute and issue a written decision. If unanimous resolution of the dispute is not reached within twenty-one (21) days, EPA's Regional Administrator shall issue a written position on the dispute. The Air Force or the State may, within fourteen (14) days of the Regional Administrator's issuance of EPA's position, issue a written notice elevating the dispute to the Administrator of EPA for resolution in accordance with all applicable laws and procedures. In the event the Air Force or the State elects not to elevate the dispute to the Administrator within the designated fourteen (14) day escalation period, the Air Force and the State shall be deemed to have agreed with the Regional Administrator's written position with respect to the dispute.

12.7 Upon escalation of a dispute to the Administrator of EPA pursuant to Subsection 12.6 above, the Administrator will review and resolve the dispute within twenty-one (21) days. Upon request, and prior to resolving the dispute, the EPA Administrator shall meet and confer with the Air Force Logistics Command, Chief of Staff and DHS Chief Deputy Director to discuss the issue(s) under dispute. Upon resolution, the Administrator shall provide the Air Force and the State with a written final decision setting forth resolution of the dispute. The duties of the Administrator set forth in this Section shall not be delegated.

12.8 The pendency of any dispute under this Section shall not affect any Party's responsibility for timely performance of the work required by this Agreement, except that the time period for completion of work affected by such dispute shall be extended for a period of time usually not to exceed the actual time taken to resolve any good faith dispute in accordance with the procedures specified herein. All elements of the work required by this Agreement which are not affected by the dispute shall continue and be completed in accordance with the applicable timetable and deadline or schedule.

12.9 When dispute resolution is in progress, work affected by the dispute will immediately be discontinued if the Hazardous Waste Management Division Director for EPA Region 9 requests, in writing, that work related to the dispute be stopped because, in EPA's opinion, such work is inadequate or defective, and such inadequacy or defect is likely to yield an adverse effect on human health or the environment, or is likely to have a substantial adverse effect on the remedy selection or implementation process. The State may request the EPA Hazardous Waste Management Division Director to order work stopped for the reasons set out above. To the extent possible, the Party seeking a work stoppage shall consult with the other Parties prior to initiating a work stoppage request. After work stoppage, if a Party believes that the work stoppage is inappropriate or may have potential significant adverse impacts, the Party may meet with the other Parties to discuss the work stoppage. Following this meeting, and further considerations of this issue the EPA Hazardous Waste Management Division Director will issue, in writing, a final decision with respect to the work stoppage. The final written decision of the EPA Hazardous Waste Management Division Director may immediately be subject to formal dispute resolution. Such dispute may be brought directly to either the DRC or the SEC, at the discretion of the Party requesting dispute resolution.

12.10 Within twenty-one (21) days of resolution of a dispute pursuant to the procedures specified in this Section, the Air Force shall incorporate the resolution and final determination into the appropriate plan, schedule or procedures and proceed to implement this Agreement according to the amended plan, schedule or procedures.

12.11 Resolution of a dispute pursuant to this Section of the Agreement constitutes a final resolution of any dispute arising under this Agreement. All Parties shall abide by all terms and conditions of any final resolution of dispute obtained pursuant to this Section of this Agreement.

13. ENFORCEABILITY

13.1 The Parties agree that:

(a) Upon the effective date of this Agreement, any standard, regulation, condition, requirement or order which has become effective under CERCLA and is incorporated into this Agreement is enforceable by any person pursuant to CERCLA section

310, and any violation of such standard, regulation, condition, requirement or order will be subject to civil penalties under CERCLA sections 310(c) and 109;

(b) All timetables or deadlines associated with the RI/FS shall be enforceable by any person pursuant to CERCLA section 310, and any violation of such timetables or deadlines will be subject to civil penalties under CERCLA sections 310(c) and 109;

(c) All terms and conditions of this Agreement which relate to remedial actions, including corresponding timetables, deadlines or schedules, and all work associated with remedial actions, shall be enforceable by any person pursuant to CERCLA section 310(c), and any violation of such terms or conditions will be subject to civil penalties under CERCLA sections 310(c) and 109; and

(d) Any final resolution of a dispute pursuant to Section 12 (Dispute Resolution) of this Agreement which establishes a term, condition, timetable, deadline or schedule shall be enforceable by any person pursuant to CERCLA section 310(c), and any violation of such terms, condition, timetable, deadline or schedule will be subject to civil penalties under CERCLA sections 310(c) and 109.

13.2 Nothing in this Agreement shall be construed as authorizing any person to seek judicial review of any action or work where review is barred by any provision of CERCLA including CERCLA section 113(h).

13.3 Nothing in this Agreement shall be construed as a restriction or waiver of any rights the EPA or the State may have under CERCLA, including but not limited to any rights under sections 113 and 310, 42 U.S.C. § 9613 and 9659. The Air Force does not waive any rights it may have under CERCLA section 120, SARA section 211 and Executive Order 12580.

13.4 The Parties agree to exhaust their rights under Section 12 (Dispute Resolution) prior to exercising any rights to judicial review that they may have.

13.5 The Parties agree that all Parties shall have the right to enforce the terms of this Agreement.

14. STIPULATED PENALTIES

14.1 In the event that the Air Force fails to submit a primary document listed in Section 7 (Consultation) to EPA and the State pursuant to the appropriate timetable or deadline in accordance with the requirements of this Agreement, or fails to comply with a term or condition of this Agreement which relates to an operable unit or final remedial action, EPA may assess a stipulated penalty against the Air Force. The State may also recommend to EPA that a stipulated penalty be assessed. A stipulated penalty may be assessed in an amount not to exceed $5,000 for the first week (or part thereof), and $10,000 for each additional week (or part thereof) for which a failure set forth in this Subsection occurs.

14.2 Upon determining that the Air Force has failed in a manner set forth in Subsection 14.1, EPA shall so notify the Air Force in writing. If the failure in question is not already subject to dispute resolution at the time such notice is received, the Air Force shall have fifteen (15) days after receipt of the notice to invoke dispute resolution on the question of whether the failure did in fact occur. The Air Force shall not be liable for the stipulated penalty assessed by EPA if the failure is determined, through the dispute resolution process, not to have occurred. No assessment of a stipulated penalty shall be final until the conclusion of dispute resolution procedures related to the assessment of the stipulated penalty.
14.3 The annual reports required by CERCLA section 120(e)(5), 42 U.S.C. § 9620(e)(5), shall include, with respect to each final assessment of a stipulated penalty against the Air Force under this Agreement, each of the following:

(a) The federal facility responsible for the failure;

(b) A statement of the facts and circumstances giving rise to the failure;

(c) A statement of any administrative or other corrective action taken at the relevant federal facility, or a statement of why such measures were determined to be inappropriate;

(d) A statement of any additional action taken by or at the federal facility to prevent recurrence of the same type of failure; and

(e) The total dollar amount of the stipulated penalty assessed for the particular failure.

14.4 Stipulated penalties assessed pursuant to this Section shall be payable to the Hazardous Substances Response Trust Fund only in the manner and to the extent expressly provided for in acts authorizing funds for, and appropriations to, the DOD. EPA and the State agree, to the extent allowed by law, to share equally any stipulated penalties paid on behalf of McClellan AFB between the Hazardous Substance Response Trust Fund and an appropriate State fund.

14.5 In no event shall this Section give rise to a stipulated penalty in excess of the amount set forth in CERCLA section 109, 42 U.S.C. § 9609.

14.6 This Section shall not affect the Air Force's ability to obtain an extension of a timetable, deadline or schedule pursuant to Section 9 (Extensions).

14.7 Nothing in this Agreement shall be construed to render any officer or employee of the Air Force personally liable for the payment of any stipulated penalty assessed pursuant to this Section.

15. FUNDING

15.1 It is the expectation of the Parties to this Agreement that all obligations of the Air Force arising under this Agreement will be fully funded. The Air Force agrees to seek sufficient funding through the DOD budgetary process to fulfill its obligations under this Agreement.

15.2 In accordance with CERCLA section 120 (e)(5)(B), 42 U.S.C. § 9620 (e)(5)(B), the Air Force shall include, in its submission to the Department of Defense annual report to Congress, the specific cost estimates and budgetary proposals associated with the implementation of this Agreement.

15.3 Any requirement for the payment or obligation of funds, including stipulated penalties, by the Air Force established by the terms of this Agreement shall be subject to the availability of appropriated funds, and no provision herein shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. In cases where payment or obligation of funds would constitute a violation of the Anti-Deficiency Act, the dates established requiring the payment or obligation of such funds shall be appropriately adjusted.

15.4 If appropriated funds are not available to fulfill the Air Force's obligations under this Agreement, EPA and the State reserve the right to initiate an action against any other person, or to take any response action, which would be appropriate absent this Agreement.

15.5 Funds authorized and appropriated annually by Congress under the "Environmental Restoration, Defense" appropriation in the Department of Defense Appropriation Act and allocated by the Deputy Assistant Secretary of Defense for Environment to the Air Force will be the source of funds for activities required by this Agreement consistent with section 211 of CERCLA, 10 U.S.C. § Chapter 160. However, should the Environmental Restoration, Defense appropriation be inadequate in any year to meet the total Air Force CERCLA implementation requirements, the DOD shall employ and the Air Force shall follow a standardized DOD prioritization process which allocates that year's appropriations in a manner which maximizes the protection of human health and the environment. A standardized DOD prioritization model shall be developed and utilized with the assistance of EPA and the states.

16. EXEMPTIONS

16.1 The obligation of the Air Force to comply with the provisions of this Agreement may be relieved by:

(a) A Presidential order of exemption issued pursuant to the provisions of CERCLA section 120(j)(1), 42 U.S.C. § 9620(j)(1), or RCRA section 6001, 42 U.S.C. § 6961; or

(b) The order of an appropriate court.

16.2 The State reserves any statutory right it may have to challenge any Presidential Order relieving the Air Force of its obligations to comply with this Agreement.

17. STATUTORY COMPLIANCE/RCRA-CERCLA INTEGRATION

17.1 The Parties intend to integrate the Air Force's CERCLA response obligations and RCRA corrective action obligations which relate to the release(s) of hazardous substances, hazardous wastes, pollutants or contaminants covered by this Agreement into this comprehensive Agreement. Therefore, the Parties intend that activities covered by this Agreement will achieve compliance with CERCLA, 42 U.S.C. § 9061 et. seq.; to satisfy the corrective action requirements of RCRA section 3004(u) & (v), 42 U.S.C. §

6924(u) & (v), for a RCRA permit, and RCRA section 3008(h), 42 U.S.C. § 6928 (h), for interim status facilities; and to meet or exceed all applicable or relevant and appropriate federal and State laws and regulations, to the extent required by CERCLA section 121, 42 U.S.C. § 9621.

17.2 Based upon the foregoing, the Parties intend that any remedial action selected, implemented and completed under this Agreement will be protective of human health and the environment such that remediation of releases covered by this Agreement shall obviate the need for further corrective action under RCRA (i.e., no further corrective action shall be required). The Parties agree that with respect to releases of hazardous waste covered by this Agreement, RCRA shall be considered an applicable or relevant and appropriate requirement pursuant to CERCLA section 121, 421 U.S.C. § 9621.

17.3 The Parties recognize that the requirement to obtain permits for response actions undertaken pursuant to this Agreement shall be as provided for in CERCLA and the NCP. The activities at McClellan AFB may require the issuance of permits under federal and State laws. This Agreement does not affect the requirements, if any, to obtain such permits. However, if a permit is issued to the Air Force for ongoing hazardous waste management activities at the Site, the issuing party shall reference and incorporate in a permit condition any appropriate provision, including appropriate schedules (and the provision for extension of such schedules), of this Agreement into such permit. The Parties intend that any judicial review of any permit condition which references this Agreement shall, to the extent authorized by law, only be reviewed under the provisions of CERCLA.

18. PROJECT MANAGERS

18.1 On or before the effective date of this Agreement, EPA, the Air Force, and the State shall each designate a Project Manager and an alternate (each hereinafter referred to as Project Manager), for the purpose of overseeing the implementation of this agreement. The Project Managers shall be responsible on a daily basis for assuring proper implementation of the RI/FS and the RD/RA in accordance with the terms of the Agreement. In addition to the formal notice provisions set forth in Section 21 (Notification), to the maximum extent possible, communications among the Air Force, EPA, and the State on all documents, including reports, comments, and other correspondence concerning the activities performed pursuant to this Agreement, shall be

directed through the Project Managers.

18.2 The Air Force, EPA, and the State may change their respective Project Managers. The other Parties shall be notified in writing within five days of the change.

18.3 The Project Managers shall meet to discuss progress as described in Subsection 7.5. Although the Air Force has ultimate responsibility for meeting its respective deadlines or schedule, the Project Managers shall assist in this effort by consolidating the review of primary and secondary documents whenever possible, and by scheduling progress meetings to review reports, evaluate the performance of environmental monitoring at the Site, review RI/FS or RD/RA progress, discuss target dates for elements of the RI/FS to be conducted in the following one hundred and eighty (180) days, resolve disputes, and adjust deadlines or schedules. At least one week prior to each scheduled progress meeting, the Air Force will provide to the other Parties a draft agenda and summary of the status of the work subject to this Agreement. Unless the Project Managers agree otherwise, the minutes of each progress meeting, with the meeting agenda and all documents discussed during the meeting (which were not previously provided) as attachments, shall constitute a progress report, which will be sent to all Project Managers within ten business days after the meeting ends. If an extended period occurs between Project Manager progress meetings, the Project Managers may agree that the Air Force shall prepare an interim progress report and provide it to the other Parties. The report shall include the information that would normally be discussed in a progress meeting of the Project Managers. Other meetings shall be held more frequently upon request by any Project Manager.

18.4 The authority of the Project Managers shall include, but is not limited to:

(a) Taking samples and ensuring that sampling and other field work is performed in accordance with the terms of any final work plan and QAPP;

(b) Observing, and taking photographs and making such other reports on the progress of the work as the Project Managers deem appropriate, subject to the limitations set forth in Section 25 (Access to Federal Facility) hereof;

(c) Reviewing records, files and documents relevant to the work performed;

(d) Determining the form and specific content of the Project Manager meetings and of progress reports based on such meetings; and

(e) Recommending and requesting minor field modifications to the work to be performed pursuant to a final work plan, or in techniques, procedures, or design utilized in carrying out such work plan.

18.5 Any minor field modification proposed by any Party pursuant to this Section must be approved orally by all Parties' Project Managers to be effective. The Air Force Project Manager will make a contemporaneous record of such modification and approval in a written log, and a copy of the log entry will be provided as part of the next progress report. Even after approval of the proposed modification, no Project Manager will require implementation by a government contractor without approval of the appropriate Government Contracting Officer.

18.6 The Project Manager for the Air Force shall be responsible for day-to-day field activities at the Site. The Air Force Project Manager or other designated employee of McClellan AFB Environmental Task Force shall be present at the Site or reasonably available to supervise work during all hours of work performed at the Site pursuant to this Agreement. For all times that such work is being performed, the Air Force Project Manager shall inform the command post at McClellan AFB of the name and telephone number of the designated employee responsible for supervising the work.

18.7 The Project Managers shall be reasonably available to consult on work performed pursuant to this Agreement and shall make themselves available to each other for the pendency of this Agreement. The absence of EPA, the State, or Air Force Project Managers from the facility shall not be cause for work stoppage of activities taken under this Agreement.

19. PERMITS

19.1. The Parties recognize that under sections 121(d) and 121(e)(1) of CERCLA/SARA, 42 U.S.C. § 9621(d) and 9621(e)(1), and the NCP, portions of the response actions called for by this Agreement and conducted entirely on-site are exempted from the procedural requirement to obtain a federal, State, or local permit but must satisfy all the applicable or relevant and appropriate federal and State standards, requirements, criteria, or limitations which would have been included in any such permit.

19.2 This Section is not intended to relieve the Air Force from any and all regulatory requirements, including obtaining a permit, whenever it proposes a response action involving either the movement of hazardous substances, pollutants, or contaminants off-site, or the conduct of a response action off-site.

19.3 The Air Force shall notify EPA and the State in writing of any permit required for off-site activities as soon as it becomes aware of the requirement. The Air Force agrees to obtain any permits necessary for the performance of any work under this Agreement. Upon request, the Air Force shall provide EPA and the State copies of all such permit applications and other documents related to the permit process. Copies of permits obtained in implementing this Agreement shall be appended to the appropriate submittal or progress report. Upon request by the Air Force Project Manager, the Project Managers of EPA and the State will assist McClellan AFB to the extent feasible in obtaining any required permit.

20. QUALITY ASSURANCE

20.1 In order to provide quality assurance and maintain quality control regarding all field work and sample collection performed pursuant to this Agreement, the Air Force agrees to designate a Quality Assurance Officer (QAO) who will ensure that all work is performed in accordance with approved work plans, sampling plans and QAPPs. the QAO shall maintain for inspection a log of quality assurance field activities and provide a copy to the Parties upon request.

20.2 To ensure compliance with the QAPP, the Air Force shall arrange for access, upon request by EPA or the State, to all laboratories performing analysis on behalf of the Air Force pursuant to this Agreement.

21. NOTIFICATION

21.1 All Parties shall transmit primary and secondary documents, and comments thereon, and all notices required herein by next day mail, hand delivery, or facsimile. Time limitations shall commence upon receipt.

21.2 Notice to the individual Parties pursuant to this Agreement shall be sent to the addresses specified by the Parties. Initially these shall be as follows:

Remedial Project Manager, McClellan AFB (T-4-6)
U.S. Environmental Protection Agency, Region 9
Hazardous Waste Management Division
215 Fremont Street
San Francisco, CA 94105;

and

Senior of Military Team
California Department of Health Services
Toxic Substances Control Division
Region 1, Site Mitigation Unit
83 Scripps Drive, Suite 101
Sacramento, CA 95825

and

SM-ALC/EM
McClellan AFB, CA 95652-5000

21.3 All routine correspondence may be sent via first class mail to the above addressees.

22. DATA AND DOCUMENT AVAILABILITY

22.1 Each Party shall make all sampling results, test results or other data or documents generated through the implementation of this Agreement available to the other Parties. All quality assured data shall be supplied within sixty (60) days of its collection. If the quality assurance procedure is not completed within sixty (60) days, raw data or results shall be submitted within the sixty (60) day period and quality assured data or results shall be submitted as soon as they become available.

22.2 The sampling Party's Project Manager shall notify the other Parties' Project Managers not less than 10 days in advance of any sample collection. If it is not possible to provide 10 days prior notification, the sampling Party's Project Manager shall notify the other Project Managers as soon as possible after becoming aware that samples will be collected. Each Party shall allow, to the extent practicable, split or duplicate samples to be taken by the other Parties or their authorized representatives.

23. RELEASE OF RECORDS

23.1 The Parties may request of one another access to or a copy of any record or document relating to this Agreement or the IRP. If the Party that is the subject of the request (the originating Party) has the record or document, that Party shall provide access to or a copy of the record or document; provided, however, that no access to or copies of records or documents need be provided if they are subject to claims of attorney-client privilege, attorney work product, deliberative process, enforcement confidentiality, or properly classified for national security under law or executive order.

23.2 Records or documents identified by the originating Party as confidential pursuant to other non-disclosure provisions of the Freedom of Information Act, 5 U.S.C. § 552, or the California Public Records Act, section 6250, et.seq. of the California Government Code, shall be released to the requesting Party, provided the requesting Party states in writing that it will not release the record or document to the public without prior approval of the originating Party or after opportunity to consult and, if necessary, contest any preliminary decision to release a document, in accordance with applicable statutes and regulations. Records or documents which are provided to the requesting Party and which are not identified as confidential may be made available to the public without further notice to the originating Party.

23.3 The Parties will not assert one of the above exemptions, including any available under the Freedom of Information Act or California Public Records Act, even if available, if no governmental interest would be jeopardized by access or release as determined solely by that Party.

23.4 Subject to section 120(j)(2) of CERCLA, 42 U.S.C. § 9620(j)(2), any documents required to be provided by Section 7 (Consultation), and analytical data showing test results will always be releasable and no exemption shall be asserted by any Party.

23.5 This Section does not change any requirement regarding press releases in Section 26 (Public Participation and Community Relations).

23.6 A determination not to release a document for one of the reasons specified above shall not be subject to Section 12

(Dispute Resolution). Any Party objecting to another Party's determination may pursue the objection through the determining Party's appeal procedures.

24. PRESERVATION OF RECORDS

24.1 Despite any document retention policy to the contrary, the Parties shall preserve, during the pendency of this Agreement and for a minimum of ten years after its termination, all records and documents contained in the Administrative Record and any additional records and documents retained in the ordinary course of business which relate to the actions carried out pursuant to this Agreement. After this ten year period, each Party shall notify the other Parties at least 45 days prior to destruction of any such documents. Upon request by any Party, the requested Party shall make available such records or copies of any such records, unless withholding is authorized and determined appropriate by law.

25. ACCESS TO FEDERAL FACILITY

25.1 Without limitations on any authority conferred on EPA or the State by statute or regulation, EPA, the State or their authorized representatives, shall be allowed to enter McClellan AFB at reasonable times for purposes consistent with the provisions of the Agreement, subject to any statutory and regulatory requirements necessary to protect national security or mission essential activities. Such access shall include, but not be limited to, reviewing the progress of the Air Force in carrying out the terms of this Agreement; ascertaining that the work performed pursuant to this Agreement is in accordance with approved work plans, sampling plans and QAPPs; and conducting such tests as EPA, the State, or the Project Managers deem necessary.

25.2 The Air Force shall honor all reasonable requests for access by the EPA or the State, conditioned upon presentation of proper credentials. The Air Force Project Manager will provide briefing information, coordinate access and escort to restricted or controlled-access areas, arrange for base passes and coordinate any other access requests which arise.

25.3 EPA and the State shall provide reasonable notice to the Air Force Project Manager to request any necessary escorts. EPA and the State shall not use any camera, sound recording or other recording device at McClellan AFB without the permission of

the Air Force Project Manager. The Air Force shall not unreasonably withhold such permission.

25.4 The access by EPA and the State, granted in Subsection 25.1 of this Section, shall be subject to those regulations necessary to protect national security or mission essential activities. Such regulation shall not be applied so as to unreasonably hinder EPA or the State from carrying out their responsibilities and authority pursuant to this Agreement. In the event that access requested by either EPA or the State is denied by the Air Force, the Air Force shall provide an explanation within 48 hours of the reason for the denial, including reference to the applicable regulations, and, upon request, a copy of such regulations. The Air Force shall expeditiously make alternative arrangements for accommodating the requested access. The Parties agree that this Agreement is subject to CERCLA section 120(j), 42 U.S.C. § 9620(j), regarding the issuance of Site Specific Presidential Orders as may be necessary to protect national security.

25.5 If EPA or the State requests access in order to observe a sampling event or other work being conducted pursuant to this Agreement, and access is denied or limited, the Air Force agrees to reschedule or postpone such sampling or work if EPA or the State so requests, until such mutually agreeable time when the requested access is allowed. The Air Force shall not restrict the access rights of the EPA or the State to any greater extent than the Air Force restricts the access rights of its contractors performing work pursuant to this Agreement.

25.6 All Parties with access to McClellan AFB pursuant to this Section shall comply with all applicable health and safety plans.

25.7. To the extent the activities pursuant to this Agreement must be carried out on other than Air Force property, the Air Force shall use its best efforts, including its authority under CERCLA section 104, to obtain access agreements from the owners which shall provide reasonable access for the Air Force, EPA, and the State and their representatives. The Air Force may request the assistance of the State in obtaining such access, and upon such request, the State will use its best efforts to obtain the required access. In the event that the Air Force is unable to obtain such access agreements, the Air Force shall promptly notify EPA and the State.

25.8 With respect to non-Air Force property on which monitoring wells, pumping wells, or other response actions are to

be located,the Air Force shall use its best efforts to ensure that any access agreements shall provide for the continued right of entry for all Parties for the performance of such remedial activities. In addition, any access agreement shall provide that no conveyance of title, easement, or other interest in the property shall be consummated without the continued right of entry.

25.9 Nothing in this Section shall be construed to limit EPA's and the State's full right of access as provided in 42 U.S.C. § 9604(e) and California Health and Safety Code section 25185, except as that right may be limited by 42 U.S.C. § 9620(j)(2), Executive Order 12580, or other applicable national security regulations or federal law.

26. PUBLIC.PARTICIPATION AND COMMUNITY RELATIONS

26.1 The Parties agree that any proposed remedial action alternative(s) and plan(s) for remedial action at the Site arising out of this Agreement shall comply with the administrative record and public participation requirements of CERCLA sections 113(k) and 117, 42 U.S.C. § 9313(k) and 9617, relevant community relations provisions in the NCP, EPA guidances, and, to the extent they may apply, State statutes and regulations. The State agrees to inform the Air Force of all State requirements which it believes pertain to public participation. The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of, Section 17 (Statutory Compliance - RCRA/CERCLA Integration).

26.2 The Air Force shall develop and implement a community relations plan (CRP) addressing the environmental activities and elements of work undertaken by the Air Force, pursuant to this Agreement.

26.3 The Air Force shall establish and maintain an administrative record at a place, at or near the federal facility, which is freely accessible to the public, which record shall provide the documentation supporting the selection of each response action. The administrative record shall be established and maintained in accordance with relevant provisions in CERCLA, the NCP, and EPA guidances. A copy of each document placed in the administrative record, not already provided, will be provided by the Air Force to the other Parties. The administrative record developed by the Air Force shall be updated and new documents

supplied to the other Parties on at least a quarterly basis. An index of documents in the administrative record will accompany each update of the administrative record.

26.4 Except in case of an emergency, any Party issuing a press release with reference to any of the work required by this Agreement shall advise the other Parties of such press release and the contents thereof, at least 48 hours prior to issuance.

27. FIVE YEAR REVIEW

27.1 Consistent with 42 U.S.C. § 9621(c) and in accordance with this Agreement, if the selected remedial action results in any hazardous substances, pollutants or contaminants remaining at the Site, the Parties shall review the remedial action program at least every five (5) years after the initiation of the final remedial action to assure that human health and the environment are being protected by the remedial action being implemented.

27.2 If, upon such review, any of the Parties proposes additional work or modification of work, such proposal shall be handled under Subsection 7.10 of this Agreement.

27.3 To synchronize the five-year reviews for all operable units and final remedial actions, the following procedure will be used: Review of operable units will be conducted every five years counting from the initiation of the first operable unit, until initiation of the final remedial action for the Site. At that time a separate review for all operable units shall be conducted. Review of the final remedial action (including all operable units) shall be conducted every five years, thereafter.

28. TRANSFER OF REAL PROPERTY

28.1 The Air Force shall not transfer any real property comprising the federal facility except in compliance with section 120(h) of CERCLA, 42 U.S.C. § 9620(h). Prior to any sale of any portion of the land comprising the federal facility which includes an area within which any release of hazardous substance has come to be located, the Air Force shall give written notice of that condition to the buyer of the land. At least thirty (30) days prior to any conveyance subject to section 120(h) of CERCLA, the Air Force shall notify all Parties of the transfer of any real property subject to this Agreement and the provisions made for any additional remedial actions, if required.

28.2 Until six months following the effective date of the final regulations implementing CERCLA section 120(h)(2), 42 U.S.C. § 9620(h)(2), the Air Force agrees to comply with the most recent version of the regulations as proposed and all other substantive and procedural provisions of CERCLA section 120(h) and Subsection 28.1 of this Section.

29. AMENDMENT OR MODIFICATION OF AGREEMENT

29.1 This Agreement can be amended or modified solely upon written consent of all Parties. Such amendments or modifications may be proposed by any Party and shall be effective the third business day following the day the last Party to sign the amendment or modification sends its notification of signing to the other Parties. The Parties may agree to a different effective date.

30. TERMINATION OF THE AGREEMENT

30.1 The provisions of this Agreement shall be deemed satisfied and terminated upon receipt by the Air Force of written notice from EPA, with concurrence of the State, that the Air Force has demonstrated that all the terms of this Agreement have been completed. If EPA denies or otherwise fails to grant a termination notice within 90 days of receiving a written Air Force request for such notice, EPA shall provide a written statement of the basis for its denial and describe the Air Force actions which, in the view of EPA, would be a satisfactory basis for granting a notice of completion. Such denial shall be subject to dispute resolution.

30.2 This provision shall not affect the requirements for periodic review at maximum five year intervals of the efficacy of the remedial actions.

31. COVENANT NOT TO SUE AND RESERVATION OF RIGHTS

31.1 In consideration for the Air Force's compliance with this Agreement, and based on the information known to the Parties or reasonably available on the effective date of this Agreement, EPA, the Air Force, and the State agree that compliance with this agreement shall stand in lieu of any administrative, legal, and equitable remedies against the Air Force available to them regarding the releases or threatened releases of hazardous substances including hazardous wastes, pollutants or contaminants

at the Site which are the subject of any RI/FS conducted pursuant to this Agreement and which have been or will be adequately addressed by the remedial actions provided for under this Agreement.

31.2 Notwithstanding this Section, or any other Section of this Agreement, the State shall retain any statutory right it may have to obtain judicial review of any final decision of the EPA on selection of remedial action pursuant to any authority the State may have under CERCLA, including sections 121(e)(2), 121(f), 310, and 113.

32. OTHER CLAIMS

32.1 Nothing in this Agreement shall constitute or be construed as a bar or release from any claim, cause of action or demand in law or equity by or against any person, firm, partnership or corporation not a signatory to this Agreement for any liability it may have arising out of or relating in any way to the generation, storage, treatment, handling, transportation, release, or disposal of any hazardous substances, hazardous waste, pollutants, or contaminants found at, taken to, or taken from the federal facility. Unless specifically agreed to in writing by the Parties, EPA and the State shall not be held as a party to any contract entered into by the Air Force to implement the requirements of this Agreement.

33. RECOVERY OF EPA EXPENSES

33.1 The Parties agree to amend this Agreement at a later date in accordance with any subsequent national resolution of the issue of cost reimbursement. Pending such resolution, EPA reserves any rights it may have with respect to cost reimbursement.

34. STATE SUPPORT SERVICES

34.1 The Air Force agrees to request funding and reimburse the State, subject to the conditions and limitations set forth in this Section, and subject to Section 15 (Funding), for all reasonable costs it incurs in providing services in direct support of the Air Force's environmental restoration activities pursuant to this Agreement at the Site.

34.2 Reimbursable expenses shall consist only of actual expenditures required to be made and actually made by the State in providing the following assistance to McClellan Air Force Base:

(a) Timely technical review and substantive comment on reports or studies which the Air Force prepares in support of its response actions and submits to the State.

(b) Identification and explanation of unique State requirements applicable to military installations in performing response actions, especially State applicable or relevant and appropriate requirements (ARARs).

(c) Field visits to ensure investigations and cleanup activities are implemented in accordance with appropriate State requirements, or in accordance with agreed upon conditions between the State and the Air Force that are established in the framework of this Agreement.

(d) Support and assistance to the Air Force in the conduct of public participation activities in accordance with federal and State requirements for public involvement.

(e) Participation in the review and comment functions of Air Force McClellan AFB Task Force.

(f) Other services specified in this Agreement.

34.3 Within ninety (90) days after the end of each quarter of the federal fiscal year, the State shall submit to the Air Force an accounting of all State costs actually incurred during that quarter in providing direct support services under this Section. Such accounting shall be accompanied by cost summaries and be supported by documentation which meets federal auditing requirements. The summaries will set forth employee-hours and other expenses by major type of support service. All costs submitted must be for work directly related to implementation of this Agreement and not inconsistent with either the National Contingency Plan (NCP) or the requirements described in OMB Circulars A-87 (Cost Principles for State and Local Governments) and A-128 (Audits for State and Local Cooperative Agreements with State and Local Governments) and Standard Forms 424 and 270. The Air Force has the right to audit cost reports used by the State to develop the cost summaries. Before the beginning of each fiscal year, the State shall supply a budget estimate of what it plans to do in the next year in the same level of detail as the billing documents.

34.4 Except as allowed pursuant to Subsections 34.5 or 34.6 below, within ninety (90) days of receipt of the accounting provided pursuant to Subsection 34.3 above, the Air Force shall reimburse the State in the amount set forth in the accounting.

34.5 In the event the Air Force contends that any of the costs set forth in the accounting provided pursuant to Subsection 34.3 above are not properly payable, the matter shall be resolved through a bilateral dispute resolution process set forth at Subsection 34.9 below.

34.6 The Air Force shall not be responsible for reimbursing the State for any costs actually incurred in the implementation of this Agreement in excess of one percent (1%) of the Air Force total lifetime project costs incurred through construction of the remedial action(s). This total reimbursement limit is currently estimated to be a sum of $1.5 million over the life of the Agreement. Circumstances could arise whereby fluctuations in the Air Force estimates or actual final costs through the construction of the final remedial action creates a situation where the State receives reimbursement in excess of one percent of these costs. Under these circumstances, the State remains entitled to payment for services rendered prior to the completion of a new estimate it the services are within the ceiling applicable under the previous estimate.

(a) Funding of support services must be constrained so as to avoid unnecessary diversion of the limited Defense Environmental Restoration Account funds available for the overall cleanup, and

(b) Support services should not be disproportionate to overall project costs and budget.

34.7 Either the Air Force or the State may request, on the basis of significant upward or downward revisions in the Air Force's estimate of its total lifetime costs through construction used in Subsection 34.6 above, a renegotiation of the cap. Failing an agreement, either the Air Force or the State may initiate dispute resolution in accordance with Subsection 34.9 below.

34.8 The State agrees to seek reimbursement for its expenses solely through the mechanisms established in this Section, and reimbursement provided under this Section shall be in settlement of any claims for State response costs relative to the Air Force's environmental restoration activities at the Site.

34.9 Section 12 (Dispute Resolution) notwithstanding, this Subsection shall govern any dispute between the Air Force and the State regarding the application of this Section or any matter controlled by this Section including, but not limited to, allowability of expenses and limits on reimbursement. While it is the intent of the Air Force and the State that these procedures shall govern resolution of disputes concerning State reimbursement, informal dispute resolution is encouraged.

(a) The Air Force and State Project Managers shall be the initial points of contact for coordination of dispute resolution under this Subsection.

(b) If the Air Force and State Project Managers are unable to resolve a dispute, the matter shall be referred to the Vice Commander, Sacramento Air Logistics Center, or his designated representative, and the Chief of the Site Mitigation Unit, DHS Region 1, as soon as practicable, but in any event within five (5) working days after the dispute is elevated by the Project Managers.

(c) If the Vice Commander and the Chief of the Site Mitigation Unit are unable to resolve the dispute within ten (10) working days, the matter shall be elevated to the Chief Deputy Director, DHS, and the Chief of Staff, Air Force Logistics Command.

(d) In the event the Chief Deputy Director and the Chief of Staff are unable to resolve a dispute, the State retains any legal and equitable remedies it may have to recover its expenses. In addition, the State may withdraw from this Agreement by giving sixty (60) days notice to the other Parties.

34.10 Nothing herein shall be construed to limit the ability of the Air Force to contract with the State for technical services that could otherwise be provided by a private contractor including, but not limited to:

(a) Identification, investigation, and cleanup of any contamination beyond the boundaries of McClellan Air Force Base;

(b) Laboratory analysis; or

(c) Data collection for field studies.

34.11 Nothing in this Agreement shall be construed to constitute a waiver of any claims by the State for any expenses incurred prior to the effective date of this Agreement.

34.12 The Air Force and the State agree that the terms and conditions of this Section shall become null and void when the State enters into a Defense/State Memorandum of Agreement (DSMOA) with the Department of Defense (DOD) which addresses State reimbursement.

35. STATE PARTICIPATION CONTINGENCY

35.1 If the State fails to sign this Agreement within thirty (30) days of notification of the signature by both EPA and the Air Force, this Agreement will be interpreted as if the State were not a Party and any reference to the State in this Agreement will have no effect. In addition, all other provisions of this Agreement notwithstanding, if the State does not sign this Agreement within the said thirty (30) days, McClellan AFB shall only have to comply with any State requirements, conditions, or standards, including those specifically listed in this Agreement, which McClellan AFB would otherwise have to comply with absent this Agreement.

35.2 In the event that the State does not sign this Agreement,

(a) the Air Force agrees to transmit all primary and secondary documents to appropriate State agencies at the same time such documents are transmitted to EPA; and

(b) EPA intends to consult with the appropriate State agencies with respect to the above documents and during implementation of this Agreement.

36. EFFECTIVE DATE AND PUBLIC COMMENT

36.1 The provisions of this Section shall be carried out in a manner consistent with, and shall fulfill the intent of Section 17 (Statutory Compliance - RCRA/CERCLA Integration).

36.2 Within fifteen (15) days of the date of the execution of this Agreement, the Air Force shall announce the availability of this Agreement to the public for a forty-five (45) day period of review and comment, including publication in at least two major local newspapers of general circulation. The procedures of

40 CFR Part 124.10(c) regarding persons to be notified, and Part 124.10(d) regarding contents of the notice, shall apply. Comments received shall be transmitted promptly to the other Parties after the end of the comment period. The Parties shall review such comments and shall either:

(a) Determine that this Agreement should be made effective in its present form, in which case EPA shall promptly notify all Parties in writing, and this Agreement shall become effective on the date that McClellan AFB receives such notification; or

(b) If the determination in Subsection 36.2(a) is not made, the Parties shall meet to discuss and agree upon any proposed changes. If the Parties do not mutually agree on all needed changes within fifteen (15) days from the close of the public comment period, the Parties shall submit their written notices of position, concerning those provisions still in dispute, directly to the Dispute Resolution Committee, and the procedures of Section 12 (Dispute Resolution) shall be applied to the disputed provisions. Upon resolution of any proposed changes, the Agreement, as modified, shall be re-executed by the Parties, with EPA signing last, and shall become effective on the date that it is signed by EPA.

36.3 Any response action underway upon the effective date of this Agreement shall be subject to oversight by the Parties.

37. APPENDICES AND ATTACHMENTS

37.1 Appendices shall be an integral and enforceable part of this Agreement. They shall include the most current versions of:

(a) Deadlines previously established;

(b) Comprehensive CERCLA Workplan Outline;

(c) All final primary and secondary documents which will be created in accordance with Section 7 (Consultation); and

(d) All deadlines which will be established in accordance with Section 8 (Deadlines) and which may be extended in accordance with Section 9 (Extensions).

37.2 Attachments shall be for information only and shall not be enforceable parts of this Agreement. The information in these attachments is provided to support the initial review and comment upon this Agreement, and they are only intended to reflect the conditions known at the signing of this Agreement. None of the facts related therein shall be considered admissions by, nor are they legally binding upon, any Party with respect to any claims unrelated to, or persons not a Party to, this Agreement. They shall include:

(a) Map of federal facility

(b) Chemicals of Concern

(c) Statement of Facts

(d) List of final primary documents and documents under review

(e) Installation Restoration Program Activities

McCLELLAN AFB INTERAGENCY AGREEMENT

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

Dated this 21st day of July, 1989, at McClellan Air Force Base, California.

FOR THE DEPARTMENT OF THE AIR FORCE:

Trevor A Hammond

TREVOR A. HAMMOND
MAJOR GENERAL, USAF
COMMANDER, SACRAMENTO AIR LOGISTICS CENTER:

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

Jeff Clifford for

DANIEL W. MCGOVERN
REGIONAL ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION IX

FOR THE STATE OF CALIFORNIA:

Alex R. Cunningham

ALEX CUNNINGHAM
CHIEF DEPUTY DIRECTOR
TOXIC SUBSTANCES CONTROL DIVISION
CALIFORNIA DEPARTMENT OF HEALTH SERVICES

McCLELLAN AFB INTERAGENCY AGREEMENT

Each undersigned representative of a Party certifies that he or she is fully authorized to enter into the terms and conditions of this Agreement and to legally bind such Party to this Agreement.

FOR THE DEPARTMENT OF THE AIR FORCE:

TREVOR A. HAMMOND
MAJOR GENERAL, USAF
COMMANDER, SACRAMENTO AIR LOGISTICS CENTER:

26 APR 1990
Date

FOR THE ENVIRONMENTAL PROTECTION AGENCY:

for DANIEL W. MCGOVERN
REGIONAL ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY
REGION IX

5/2/90
Date

FOR THE STATE OF CALIFORNIA:

C. DAVID WILLIS
DEPUTY DIRECTOR
TOXIC SUBSTANCES CONTROL PROGRAM
CALIFORNIA DEPARTMENT OF HEALTH SERVICES

4/27/90
Date

EFFECTIVE DATE 2 MAY 1990